



MATTINGLY LAW FIRM

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December 2, 2011

Honorable Keith P. Ellison
515 Rusk Avenue, Room 3716
Houston, Texas 77002

Re: MLF # 600-017
Client: Coldwater Machine Company, LLC
Date of Loss: January 7, 2010
C.A. # 4:10-cv-02520; *Andrew Clark vs. Coldwater Machine Company, LLC*; United States District Court, Southern District of Texas, Houston Division

Dear Judge Ellison:

This letter is copied to Vuk Vujasinovic.

Andrew Clark won the jury verdict. He has submitted a Motion to Enter Judgment. CMC and Clark have been in discussions in the past two weeks to resolve this dispute. It is anticipated that a motion to set aside the jury verdict, a motion for new trial, and a motion to enter a take nothing judgment will be filed.

Meanwhile, the amount of the actual damages (\$476,303.19) as actually stated in the Motion to Enter Judgment appears to be over stated by about \$10,000. This is probably a simple mathematical error. The correct amount is **\$466,303.68**. Here is the breakdown:

<u>AMOUNT</u>	<u>DESCRIPTION</u>
\$ 20,000	Pain and anguish – past
\$ 10,000	Pain and anguish – future
\$ 50,000	Lost wages – past
\$250,000	Reduced earning capacity – future
\$ 1,000	Disfigurement – past
\$ - 0 -	Disfigurement – future

\$ 10,000	Impairment – past
\$ 5,000	Impairment – future
\$ 19,303.68	Medical expenses – past
<u>\$101,000</u>	Medical expenses – future
<u>\$466,303.68</u>	TOTAL

The calculation of prejudgment interest is necessarily over stated as well since the principal amount is overstated. The number of days is 574 as stated in Clark's motion. Further, the interest rate is 5% as stated in Clark's motion. However, it appears that Clark did not use the correct amount of past damages and may not have fully deducted the 2% fault attributable to Mr. Clark in order to calculate the amount of prejudgment interest. CMC calculates prejudgment interest as follows:

<u>AMOUNT</u>	<u>DESCRIPTION</u>
\$ 20,000	Pain and anguish – past
\$ 50,000	Lost wages – past
\$ 1,000	Disfigurement – past
\$ 10,000	Impairment – past
<u>\$ 19,303.68</u>	Medical expenses – past
<u>\$100,303.68</u>	PAST DAMAGES

From the amount of \$100,303.68 the fault of Clark (2%) should be deducted to account for Mr. Clark's percentage of causation. Thus, the principal upon which interest is calculated is \$98,297.61. The formula is: $I = P \times \text{Days} \times 5\% \div 365 = \$98,297.61 \times 547 \times 5\% \div 365 = \$7,729.15$.

The amount of \$466,303.68 should be reduced by 2%, which is \$456,977.61. To this is added the prejudgment interest, which is \$7,729.15. Thus, the total for the judgment on December 5, 2011 is **\$464,706.76**.

I will be at the courthouse for the 8 a.m. hearing. I will be accompanied by Brandon Kinard who stands ready, willing and able to be sworn in as a licensed attorney. I will bring with me an alternative judgment for the court's consideration that reflects the foregoing.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward A. Mattingly". The signature is fluid and cursive, with a large, stylized initial "E" and "M".

Edward A. Mattingly

EAM/

cc: Vuk Vujasinovic; Bob Morgan

.../Correspo/clerk/2011/12 December/2011-12-02 CMC response to Motion to Enter judgment